A

Arbae'yah bt Zakaria v Public Prosecutor

B HIGH COURT (MELAKA) — CRIMINAL REVISION NO MA-43–1–01 OF 2024
MOHD RADZI ABDUL HAMID J
31 JANUARY 2024

C *Criminal Procedure — Revision — Application for — Application for revision of order made by magistrate — Magistrate ordered detainee who was minor to be remanded in prison and separated from adult prisoners — Whether revision should be exercised in favour of detainee — Child Act 2001 s 86(1)(c) & (2)(b)*

D MRD ('the detainee') who was a minor, was arrested for the suspicion of committing an offence of murder under s 300 of the Penal Code for causing the death of his younger sibling, MHD at their family home. At the time the offence was committed, the detainee was 14 years of age whilst the victim was nine years old. He was charged at the magistrates' court where the magistrate E made an order under s 342(5) of the Criminal Procedure Code for him to be detained for observation at a psychiatric hospital. After the full period of three months, a psychiatry medical report was issued, concluding that: (a) the detainee was suffering from schizophrenia which was characterised by psychosis that included hallucinations and delusions, changes in behaviour and F deterioration in psychosocial functions; (b) at the time the offence was committed the detainee was of unsound mind and incapable of knowing the nature of his act or that the act he committed was wrong and against the law; and (c) he was fit to stand trial and capable of making his defence at the time the report was made. When the case came up for mention, counsel for the detainee G sought an order that the detainee be placed under the care of the psychiatry ward of Hospital Melaka so that he could continue to receive medical attention and care. That application was allowed on the basis that the Sungai Udang Prison could not cater for minor remand prisoners. When the case went up for mention again, the magistrate allowed the detainee to remain in the care of H Hospital Melaka until the next mention date. On that date, counsel for the detainee sought to extend the order for him to remain in the care of Hospital Melaka but the magistrate having observed the detainee's improvement ordered for him to be remanded at the Sungai Udang Prison and that he be separated from adult prisoners. Hence, this application by the detainee's I mother as the applicant seeking to move this court to exercise its revisionary powers to set aside and substitute the magistrate's order with an order that the detainee continue to be in the custody and care of the psychiatric ward until the disposal of this case in accordance with s 86(2)(b) of the Child Act 2001 ('the Act').

Held:

(1) Where a child was denied bail, he or she could only be detained at a place of detention appointed by the Minister under the Act. Since a prison facility was not a place of detention appointed by the Minister under s 58 of the Act, the detention of a child in prison pending trial of his or her case was therefore illegal (see para 19).

(2) Since the detainee was afflicted with a certified mental condition, then he should have instead been placed in a mental hospital as required under s 86(1)(c) of the Act and certainly not in any prison, whether or not the prison could cater to the separation of children from adult offenders. The magistrate also fell into further error when she formed an opinion on the state of the detainee's mental condition merely based on a superficial observation of the detainee in court and on counsel's statement that the detainee was responding positively to medical care and attention. There was a failure by the magistrate to appreciate the particular medical condition and the mental, emotional and physical risks on the child if he was placed in a prison environment even if separated from adult offenders. There was a failure by the magistrate to give effect to the spirit of the Act as amply set out in its preamble. This application was a fit and proper case where this court's powers of revision should be exercised in favour of the detainee to correct a misapprehension of the law and facts by the magistrate and the injustice and hardship caused on the detainee (see paras 26–28 & 32).

(3) The order of the magistrate that directed the detainee to be detained at the Sungai Udang Prison was set aside. In accordance with s 86(1)(c) and (2)(b) of the Act, the detainee was ordered to be detained at Hospital Permai Johor Bahru until disposal of his cases (see paras 33–34).

[Bahasa Malaysia summary

MRD ('tahanan') yang masih di bawah umur, ditahan kerana disyaki melakukan kesalahan membunuh di bawah s 300 Kanun Keseksaan kerana menyebabkan kematian adiknya, MHD di rumah keluarga mereka. Ketika kesalahan dilakukan, tahanan berusia 14 tahun manakala mangsa berusia sembilan tahun. Dia didakwa di mahkamah majistret di mana majistret membuat perintah di bawah s 342(5) Kanun Tatacara Jenayah supaya dia ditahan untuk pemerhatian di hospital psikiatri. Selepas tempoh penuh tiga bulan, laporan perubatan psikiatri telah dikeluarkan, menyimpulkan bahawa: (a) tahanan menghidap skizofrenia yang dicirikan oleh psikosis yang merangkumi halusinasi dan khayalan, perubahan tingkah laku dan kemerosotan dalam fungsi psikososial; (b) pada masa kesalahan itu dilakukan, tahanan itu tidak sempurna akal dan tidak berupaya untuk mengetahui sifat perbuatannya atau perbuatan yang dilakukannya itu salah dan bertentangan dengan undang-undang; dan (c) dia layak untuk dibicarakan dan mampu

membuat pembelaan pada masa laporan itu dibuat. Ketika sebutan semula kes, peguam tahanan memohon perintah supaya tahanan diletakkan di bawah jagaan wad psikiatri Hospital Melaka supaya dia terus menerima rawatan dan rawatan perubatan. Permohonan itu dibenarkan atas dasar Penjara Sungai Udang tidak dapat menampung tahanan reman bawah umur. Apabila kes itu disebut semula, majistret membenarkan tahanan kekal dalam jagaan Hospital Melaka sehingga tarikh sebutan berikutnya. Pada tarikh itu, peguam bagi tahanan memohon untuk melanjutkan perintah untuk dia kekal dalam jagaan Hospital Melaka tetapi majistret selepas melihat peningkatan tahanan memerintahkan supaya dia direman di Penjara Sungai Udang dan diasingkan daripada banduan dewasa. Oleh itu, permohonan ibu tahanan selaku pemohon yang memohon kepada mahkamah ini menggunakan kuasa semakannya untuk mengetepikan dan menggantikan perintah majistret dengan perintah supaya tahanan terus berada dalam jagaan dan jagaan wad psikiatri sehingga pelupusan kes ini mengikut s 86(2)(b) Akta Kanak-Kanak 2001 ('Akta').

Diputuskan:

(1) Jika seorang kanak-kanak dinafikan ikat jamin, dia hanya boleh ditahan di tempat tahanan yang ditetapkan oleh Menteri di bawah Akta. Memandangkan kemudahan penjara bukan tempat tahanan yang ditetapkan oleh Menteri di bawah s 58 Akta, penahanan kanak-kanak di penjara sementara menunggu perbicaraan kesnya adalah tidak sah (lihat perenggan 19).

(2) Oleh kerana tahanan menghidap penyakit mental yang disahkan, dia sepatutnya ditempatkan di hospital mental seperti yang dikehendaki di bawah s 86(1)(c) Akta dan pastinya bukan di mana-mana penjara, tidak kira sama ada penjara itu boleh mengasingkan kanak-kanak daripada pesalah dewasa atau tidak. Majistret juga melakukan kesilapan apabila membuat kesimpulan mengenai keadaan mental tahanan hanya berdasarkan pemerhatian luaran terhadap tahanan di mahkamah dan kenyataan peguam bahawa tahanan itu memberi respons positif terhadap rawatan perubatan dan perhatian. Terdapat kegagalan oleh majistret untuk menghargai keadaan perubatan tertentu dan risiko mental, emosi dan fizikal terhadap kanak-kanak itu jika dia ditempatkan dalam persekitaran penjara walaupun diasingkan daripada pesalah dewasa. Terdapat kegagalan oleh majistret untuk menguatkuasakan asas Akta seperti yang dinyatakan dengan jelas dalam mukadimahnya. Permohonan ini adalah kes yang sesuai di mana kuasa semakan mahkamah ini harus digunakan untuk memihak kepada tahanan untuk membetulkan salah tanggapan undang-undang dan fakta oleh majistret dan ketidakadilan serta kesukaran yang dialami oleh tahanan (lihat perenggan 26–28 & 32).

(3) Perintah majistret yang mengarahkan tahanan untuk ditahan di Penjara Sungai Udang dibatalkan. Selaras dengan s 86(1)(c) dan (2)(b) Akta, tahanan diperintahkan untuk ditahan di Hospital Permai Johor Bahru sehingga pelupusan kesnya (lihat perenggan 33–34).]

Cases referred to

Ku Izham bin Ku Adnan v PP [1998] 5 MLJ 720; [1998] 2 CLJ 956, HC (refd)
Liaw Kwai Wah & Anor v PP [1987] 2 MLJ 69; [1987] CLJ Rep 163, SC (refd)
Nguyen Doan Nhan v PP and another appeal [2018] MLJU 1490; [2018] 1 LNS 1583, CA (refd)
PP v Mohd Ghazali bin Ibrahim [1995] MLJU 138; [1995] 2 CLJ 838, HC (refd)
PP v Muhari bin Mohd Jani & Anor [1996] 3 MLJ 116; [1999] 8 CLJ 430, HC (refd)
PP v Kulasingam [1974] 2 MLJ 26; [1974] 1 LNS 118 (refd)
Roslan bin Haji Yahya v PP [1985] 2 MLJ 218; [1984] 1 LNS 94 (refd)
Tan Sri Eric Chia Eng Hock v PP (No 1) [2007] 2 MLJ 101; [2007] 1 CLJ 565; [2007] 1 AMR 643, FC (refd)

Legislation referred to

Child Act 2001 ss 2, 58, 58(1), (2), 84, 84(3), 86, 86(1), (1)(c), (2)(b)
Courts of Judicature Act 1964 s 31
Criminal Procedure Code ss 325, 342(5)
Penal Code s 300

Arik Zakri bin Abdul (Kadir Khalek Awang & Assoc) for the applicant.
Mohd Nabilalif bin Mohd Rosli (Deputy Public Prosecutor, Melaka State Legal Advisor's Office) for the respondent.

Mohd Radzi Abdul Hamid J:

MATTER BEFORE THIS COURT

[1] This is an application for revision of an order made by the magistrate on 26 December 2023 ('order') directing the detainee, who is a minor, to be remanded at the Sungai Udang Prison, Melaka pending further proceedings in the case. This application is made by way of a letter dated 29 December 2023 ('application').

BACKGROUND

[2] MRD ('detainee') was arrested on 17 July 2023 for the suspicion of committing the offence of murder under s 300 of the Penal Code for causing the death of his younger sibling, MHD at their family home. At the time the offence was committed the detainee was 14 years of age whilst the victim was

nine years old. He was charged at the Magistrate Court 4, Ayer Keroh under Case Number MA-8445–07 of 2023.

[3] On 17 July 2023 the magistrate made an order under s 342(5) of the Criminal Procedure Code for the detainee to be detained for observation at a psychiatric hospital. He was detained at Hospital Permai for the full period of three months as allowed under that provision and by the end of that period a Psychiatry Medical Report dated 11 October 2023 was issued by the attending Psychiatrist, Dr Johari bin Khamis ('Report').

[4] The Report concluded that:

(a) the detainee was suffering from a mental illness known as Schizophrenia which is characterised by psychosis that includes hallucinations and delusions, changes in behavior and deterioration in psychosocial functions;

(b) at the time the offence was committed the detainee was of unsound mind and incapable of knowing the nature of his act or that the act he committed was wrong and against the law; and

(c) he is fit to stand trial and capable of making his defence at the time the report was made.

[5] When the case came up for mention again on 13 October 2023, counsel for the detainee sought for an order that the detainee be placed under the care of the psychiatry ward of Hospital Melaka so that he could continue to receive medical attention and care. That application was allowed on the basis that the Sungai Udang Prison could not cater for minor remand prisoners. When the case up for mention again on 21 November 2023 the magistrate allowed the detainee to remain in the care of Hospital Melaka until the next mention date on 26 December 2023. On that date counsel for the detainee sought to extend the order for him to remain in the care of Hospital Melaka so that he can continue to receive proper medical care and attention since he had shown some improvements in his mental condition.

[6] Instead of granting the extension, the magistrate having observed the detainee's improvement ordered for him to be remanded at the Sungai Udang Prison and that he be separated from adult prisoners.

[7] The detainee's mother who is the applicant here then made the application seeking to move this court to exercise its revisionary powers to set aside and substitute the magistrate's order with an order that the detainee continue to be in the custody and care of the Psychiatric Ward, Hospital Melaka or alternatively at Hospital Permai, Johor Bahru until disposal of this

case in accordance with s 86(2)(b) of the Child Act 2001 ('the Act'). A

THE APPLICATION

[8] In her application the applicant sets out the following main reasons to justify the setting aside and substitution of the order. They are: B

(a) that the detainee is a minor with a serious mental health condition who requires constant care and attention within a supervised medical facility;

(b) a prison facility cannot provide such medical supervision;

(c) there is no adequate separation of minor and adult remand detainees in prison and this exposes the detainee to surroundings that may be counter-productive to the detainee's treatment and progress; C

(d) the magistrate fell into error when she failed to consider the detainee's continuous need for supervised treatment and administration of medicines within a medical facility; D

(e) the magistrate fell into error when she made the order merely based on a superficial observation of the detainee condition in court; and

(f) the magistrate fell into error when she failed to appreciate the requirements of s 86(2) of the Act. E

[9] I n supporting the application, the applicant submitted to this court the latest medical report dated 28 December 2023 signed by Dr Nor Azwani Che Yusoff, Psychiatry Specialist at the Child and Adolescent Psychiatry Unit, Psychiatry and Mental Health Department, Hospital Melaka. In that report the specialist strongly recommended for the detainee to be monitored continuously in the psychiatry ward instead of prison for the following reasons: F

(a) the patient needs to be monitored strictly for any side effects such as chest pain, palpitation, hypotension, intestinal obstruction or seizure to Clozapine, a type of medication administered to those who don't respond well to other antipsychotics and who tend to have aggression; G

(b) the detainee was very sensitive to multiple medications and he had developed episodes of low blood pressure that required urgent intervention; H

(c) there is concern that any medical treatment responses in prison for the side effects of Clozapine may be delayed in absence of ready medical staff and doctors; I

(d) the detainee's psychotic symptoms especially delusion can be triggered and worsened in stressful situations and therefore regular assessments of psychotic symptoms need to be done by trained doctors at least twice daily; and

(e) there is a need for the detainee to be involved in active rehabilitation activities by the Occupational Therapy Team in the hospital ward daily to improve his cognitive function and social skills.

[10] The respondent did not oppose the application. Given the status of the detainee as a minor and taking into consideration the mental health issues, the respondent agreed that it would be more consistent with s 86 of the Act for the detainee to be placed under the custody and supervision of a mental hospital instead of a prison.

POWER OF REVISION

[11] The power of revision by the High Court are found in s 31 of the Courts of Judicature Act 1964 and s 325 of the CPC:

> Court of Judicature Act
>
> 31 Revision of criminal proceedings of subordinate courts
>
> The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure.
>
> Criminal Procedure Code
>
> 325 Powers of Judge on revision
>
> (1) A Judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by sections 311, 315, 316 and 317 of this Code.
>
> (2) No order under this section shall be made to the prejudice of the detainee unless he has had an opportunity of being heard, either personally or by advocate, in his own defence.
>
> (3) Nothing in this section shall be deemed to authorize a Judge to convert a finding of acquittal into one of conviction.

[12] Abdul Hamid CJ (as he then was) in the Supreme Court case of *Liaw Kwai Wah & Anor v Public Prosecutor* [1987] 2 MLJ 69; [1987] CLJ Rep 163, described the duty of the High Court in exercising its revisionary powers as follows:

> DUTY OF HIGH COURT
>
> Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior court.
>
> The judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. Where, for instsncs, a convicted person has scrupulous objection to invoke the jurisdiction of a High Court, either on a

question of legality of conviction or error of law concerning the conviction or sentence, the judge ought to call for and examine the record with a view to exercising the revisionary power to correct a miscarriage of justice.

[13] In the oft quoted decision in *Public Prosecutor v Kulasingam* [1974] 2 MLJ 26; [1974] 1 LNS 118, Hashim Yeop Sani J (as he then was) stated the following on the powers of a court in a revision:

The powers of the High Court in revision are amply provided under s 325 of the Criminal Procedure Code subject only to sub-ss (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of 'paternal or supervisory jurisdiction' in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower Court should be interfered with in the interest of justice.

DELIBERATIONS BY THIS COURT

Application made by person other than the detainee

[14] Although the fact that this application is brought on his behalf by his mother is not an issue raised by parties, this court will just briefly touch on the matter for the sake of completeness. Firstly, it has been held in *Roslan bin Haji Yahya v Public Prosecutor* [1985] 2 MLJ 218; [1984] 1 LNS 94 and *Public Prosecutor v Mohd Ghazali bin Ibrahim* [1995] MLJU 138; [1995] 2 CLJ 838 that a person who is not a party to the criminal proceedings can make an application for revision to the High Court and secondly, such application may be made by letter. In *Public Prosecutor v Muhari bin Mohd Jani & Anor* [1996] 3 MLJ 116; [1999] 8 CLJ 430 the court held:

There are many ways in which the attention of the High Court judge may be drawn to cases where decisions made in the subordinate courts may have to be revised; through newspaper reports of cases, through letters by members of the public or by aggrieved parties or by their relatives, through requests by magistrates or judges of the sessions court for revision of the one filed by the brother of the deceased.

[15] The application is therefore validly made and brought to the attention of this court.

The Child Act 2001 and pre-trial detention

[16] It has been held by judicial precedent that notwithstanding a child is charged for an offence punishable with death, he or she is entitled to special care, protection, rehabilitation and safeguards provided under the Act. In *Nguyen Doan Nhan v Public Prosecutor and another appeal* [2018] MLJU 1490; [2018] 1 LNS 1583 the Court of Appeal held:

A [42] A person, who is proved or presumed to be under the age of 18 years, shall only be tried for an offence in a Court for Children except offences punishable with death. Even if this person is charged with an offence punishable with death, he or she is also entitled to the special care, protection, rehabilitation and safeguards provided for in the Child Act.

B [43] Therefore the two stage investigation should be carried out at the earliest in the criminal proceedings to determine whether he or she is a child as defined to ensure that this child shall be provided with the special care, protection, rehabilitation and safeguards throughout the criminal proceedings notwithstanding death.

C **[17]** However, s 84(3) of the Act provides that where the child is charged for murder or other grave crime, the child cannot be released on bond:

(3) The Court For Children before whom a child is brought shall inquire into the case and unless —

D (a) the charge is one of murder or other grave crime;

(b) it is necessary in the best interests of the child arrested to remove him from association with any undesirable person; or

(c) the Court For Children has reason to believe that the re/ease of the child E would defeat the ends of justice, the Court For Children shall release the child on a bond, with or without sureties, for such amount as will, in the opinion of the Court For Children, secure the attendance of that child upon the hearing of the charge, being executed by his parent or guardian or other responsible person.

F **[18]** When a child is not released on bond under s 84 and whilst awaiting trial then the child shall be brought to a place of detention as provided under s 86 of the Act. It is necessary at this juncture to give some attention to the meaning place of detention used in s 86. Section 2 of the Act states that a place G of detention is any place established or appointed under s 58 and includes a police station, police cell or lock up, separate or apart from adult offenders. Section 58(2) states that a child shall ordinarily be remanded in custody in a place of detention established or appointed under this Act and situated in the same State in which is situated the Court. Section 58(1) provides that the H Minister may, by notification in the *Gazette,* establish or appoint such places of detention as may be required for the purposes of this Act.

[19] Therefore, where a child is denied bail, he or she can only be detained at a place of detention appointed by the Minister under the Act. Since a prison I facility is not a place of detention appointed by the Minister under s 58 of the Act, the detention of a child in prison pending trial of his or her case is therefore illegal.

[20] If for reason of mental condition, it is not practicable for the child to be

held in a place of detention, s 86(1)(c) empowers the Court for Children to detain him in a mental hospital:

> (1) If a child having been arrested and while awaiting trial before a Court For Children is not released under section 84, the Court For Children before whom the child is brought shall cause him to be detained in a place of detention provided under this Act until he can be brought before the Court having jurisdiction unless the Court For Children certifies that —
>
> (a) it is impracticable to do so;
>
> (b) he is of so unruly or depraved a character that he cannot be safely so detained; or
>
> (c) by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him,
>
> (2) Under the circumstances referred to in paragraph (1)(a), (b) or(c) , the Court For Children shall have the power to order the child to be detained:
>
> (a) in a police station, police cell or police lock-up, separate or apart from adult offenders; or
>
> (b) in a mental hospital,
>
> as the case may require.
>
> (3) If an order for detention in a mental hospital is made under subsection (2), Chapter XXXIII of the Criminal Procedure Code shall apply with such modifications as may be necessary.

Proceedings before the magistrate

[21] Now, it is not a disputed that at the date the offence was alleged to have been committed the detainee was 14 years old and therefore a 'child' according to s 2 of the Act and that the detainee suffers from a serious mental health condition known as Schizophrenia which requires medical care and attention.

[22] This court had perused the minutes of proceedings before the magistrate on the 13 October 2023, 21 November 2023 and 26 December 2023. On 13 October 2023 counsel for the detainee sought to move the court to apply the requirements of s 86 of the Act and not detain the detainee in a prison facility. The magistrate opined that it was not practicable for the detainee to be detained at the police station nor at a probation hostel and therefore he was ordered to be detained at the Psychiatry Ward of Hospital Melaka in accordance with s 86(1)(c) of the Act. A new mention date was then fixed on 21 November 2023 pending completion of the post-mortem report for the case.

[23] On 21 November 2023 the magistrate was informed by counsel for the detainee that the detainee had shown some improvements after receiving medical care and supervision at the Psychiatry Ward, Hospital Melaka. There was a need for the detainee to remain at the psychiatry ward so that his progress in receiving treatment will not be interrupted. The magistrate then extended the earlier order for the detainee to remain in the custody and care of Hospital Melaka. A new mention date on 26 December 2023 was then fixed to also allow for the completion of the post mortem report and chemist report in this case.

[24] On 26 December 2023 the magistrate was similarly informed by counsel that there was progress in the treatment of the detainee and that in the interest of the detainee as a child, the continuation of his detention at the psychiatry ward, Hospital Melaka was desirable. The minutes of proceedings show that the magistrate made an observation from the Bench that the detainee is stable and for that reason he was ordered to be detained at the Sungai Udang Prison and that he be separated from adult prisoners.

Errors committed by the magistrate

[25] Now, had the magistrate delved into ss 2, 58, 84 and 86 of the Act a little further, she would have found, as discussed earlier, that a prison is not a place of detention appointed by the Minister. With a little more investigation she would have also learnt that pursuant to PU(B) 266/2011 the Minister had appointed Sekolah Tunas Bakti Sungai Lereh, Melaka as a place of detention with effect from 1 January 2011.

[26] So, if the detainee was not a child coming within any of the situations listed in s 86(1) of the Act, he should be ordered to be detained at Sekolah Tunas Bakti Sungai Lereh, Melaka pending further proceedings in his case. Since he is afflicted with a certified mental condition, then he should have instead been placed in a mental hospital as require under s 86(1)(c) and certainly not in any prison, whether or not the prison can cater to the separation of children from adult offenders.

[27] In this court's view the magistrate also fell into further error when she formed an opinion on the state of the detainee's mental condition merely based on a superficial observation of the detainee in court and on counsel's statement from the Bar that the detainee was responding positively to medical care and attention. Whether or not the detainee was fit to be taken out of the psychiatry ward of Hospital Melaka is not a matter to be decided merely based on a superficial observation by the court but based on an expert medical assessment and opinion particularly where the mental condition is as serious as Schizophrenia. The minutes of proceedings show that there was a failure by the

magistrate to appreciate the particular medical condition and the mental, emotional and physical risks on the child if he is placed in a prison environment even if separated from adult offenders.

[28] Admittedly, the magistrate was not given the benefit of reading the latest medical report dated 28 December 2023 and the recommendations made, but it should not have been difficult for the magistrate to anticipate possible risks to timely medical attention that is required by the child, the mental and emotional anxiety and stress on a child who is detained in a prison environment, reversal or deterioration of his mental condition, the ability of prison staff and officials to devote sufficient attention to child detainees, negative influence of adult offenders in a prison and even risk of physical abuse. In this court's view, there was a failure by the magistrate to give effect to the spirit of the Act as amply set out in its Preamble:

> RECOGNIZING every child is *entitled to protection and assistance in all circumstances* without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status ...

[29] That a child who is detained pending trial must be accorded with all protection and assistance is found in the Convention of the Rights of Child 1989 to which Malaysia is a party since 17 February 1995 ('CRC'). The CRC advocates that the detention of a child should only be used as a measure of a last resort. The United Nations Minimum Standard Rules for the Administration of Juvenile Justice (The Beijing Rules') 1985 calls on member states to ensure that juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. While in custody, juveniles shall receive care, protection and all necessary individual assistance — social, educational, vocational, psychological, medical and physical — that they may require in view of their age, sex and personality.

[30] Thus, it would be the duty of a court to apply the Act having in mind the spirit and objective of the law so that the child is accorded with the protection and just treatment that he or she deserves. Placing a child in prison would only expose the child to criminal contamination which will be detrimental to his emotional and moral growth. Every opportunity should be given, where permitted by law, for the child to be placed in an environment that will encourage healing of the mind, spirit and body and to be protected from harsh and harmful conditions and influences that will only turn him or her into hardened delinquents and eventually criminals.

[31] The Federal Court in the case of *Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1)* [2007] 2 MLJ 101; [2007] 1 CLJ 565; [2007] 1 AMR 643

referred with approval the decision in *Ku Izham bin Ku Adnan v Public Prosecutor* [1998] 5 MLJ 720; [1998] 2 CLJ 956 where it was said that the 'object of a revision is to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted in some injury to the due maintenance of law and order or in some undeserved hardship to individuals. The judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court'.

[32] Having heard the application and carefully considering the facts, this court finds that this application is a fit and proper case where this court's powers of revision should be exercised in favor of the detainee to correct a misapprehension of the law and facts by the magistrate and the injustice and hardship caused on the detainee. This court cannot renege on its duty to ensure that justice is administered in conformity with the tenets of the law, in this case the Child Act.

DECISION

[33] In the exercise of the powers of revision of this court, the order of the magistrate dated 26 December 2023 that directed him to be detained at the Sungai Udang Prison is hereby set aside.

[34] In accordance with s 86(1)(c) and (2)(b) of the Act that requires a child with a mental condition to be detained in a mental hospital, the detainee is herebye ordered to be detained at Hospital Permai Johor Bahru until disposal of his case.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh